86-335

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No.

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

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481

QUESTIONS PRESENTED

Whether the Freedom of Religion Clause of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, bars the inquiry of a civil trial to determine whether the Christian Science Church, its practitioner and its nurse were guilty of tortious conduct in causing the death of one of their patients by wrongfully denying him medical care that would have saved his life.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

Petitioner, Mary Baumgartner, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the First District Appellate Court for the State of Illinois entered in this proceeding on March 4, 1986.

OPINION BELOW

The opinion of the First District Appellate Court for the State of Illinois, which appears in the Appendix hereto, p. A1, *infra*, is reported at 141 Ill.App.3d 398, 490 N.E.2d 1319, 96 Ill.Dec. 114 (1st Dist. 1986).

JURISDICTION

The judgment of the First District Appellate Court for the State of Illinois was entered on March 4, 1986. A timely petition for leave to appeal to the Illinois Supreme Court was denied on June 3, 1986 and this petition for certiorari was filed within 90 days of that date. The Illinois Supreme Court's order is included in the Appendix hereto at A16. This Court's jurisdiction is invoked under 28 U.S.C., Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

RAISING THE FEDERAL QUESTION

Petitioner filed a lawsuit in the Circuit Court of Cook County, Illinois against respondents to recover money damages from them for the alleged wrongful death of John Baumgartner. Petitioner's Fourth Amended Complaint appears in the Appendix hereto p. A17, *infra*. Named as defendants are the First Church of Christ, Scientist, in Boston, Massachusetts, the Mother Church of the denomination, Paul A. Erickson, a Christian Science practitioner and Ruth L. Tanner, a Christian Science nurse. Damages are claimed under negligence and intentional tort theories.

The lawsuit also seeks to impose a constructive trust over property Baumgartner had bequeathed to the Church in his will on the theory that the Church's tortious conduct in causing his death should bar it from receiving benefits from his demise.

The thrust of petitioner's tort claims is that respondents wrongfully prevented John Baumgartner from obtaining medical care by refusing to stop treating him when asked to do so, by making misrepresentations about the status of his health and by using threats, intimidation and coercion to reverse Baumgartner's decision to seek medical treatment in place of Christian Science faith healing. Petitioner contends that this conduct of respondents was in violation of their common law duties of care and that it also constituted Christian Science malpractice in that the practitioner and nurse violated regulations established by the Church governing healing practices.

In the trial court, respondents raised the shield of the First Amendment. They claimed that the issues raised by petitioner's complaint are not justiciable because an inquiry would have to be made into whether the tenets of the Christian Science Church are valid. Repondents contended that such an inquiry is barred by the First Amendment.

The trial court agreed and granted respondents' motions to dismiss. The First District Appellate Court for the State of Illinois affirmed the dismissal. It specifically held that the causes of action alleged in petitioner's complaint would require an intrusive inquiry into the beliefs of Christian Science and their validity and such an inquiry is precluded by the First Amendment. *Baumgartner v. First Church of Christ, Scientist*, 141 Ill.App.3d 398, 490 N.E.2d 1319, 1325, 1326 (1st Dist. 1986).

STATEMENT OF THE CASE

As alleged in Petitioner's Fourth Amended Complaint, John Baumgartner died on October 23, 1974, at his home near Plano, Illinois, of uremic poisoning which was the result of untreated prostatitis. He had been acutely ill for 10 days. Simple surgery and medication can cure prostatitis.

At the time of his death, John Baumgartner was a successful inventor and industrialist. He was survived by his wife, Mary, and his two minor children, David and Debra. During his last illness, Baumgartner retained the services of Paul Erickson, a Christian Science practitioner, to provide him with spiritual healing. Erickson brought in Ruth Tanner, a Christian Science nurse, to assist him in his treatment.

Christian Science is a religious denomination founded by Mary Baker Eddy in 1879. Its basic premise is that disease can be cured through prayer. Its followers do not believe in medical care for the treatment of physical ailments.

The First Church of Christ, Scientist, in Boston, Massachusetts, is the head of and controls the religious denomination. It trains practitioners and nurses in the art of Christian Science healing. The Church lists practitioners and nurses in the *Christian Science Journal*, a Church publication, when they have attained competency. The

Church expects practitioners and nurses to earn their livings exclusively from healing. It advises practitioners and nurses on both spiritual and legal aspects of their healing activities. It publishes specific guidelines, procedures and directives that govern their administration of Christian Science treatment.

The Christian Science Church is an established health care enterprise. Both health insurance carriers and government health insurance programs such as Medicaid and Medicare recognize Christian Science treatment as a reimbursable health care expenditure.

When John Baumgartner became ill on October 13, 1974, he called Paul Erickson who came to his home immediately. Erickson locked himself into a bathroom with Baumgartner and administered hot baths and massaged Baumgartner's prostate gland. Hot baths and prostate massage are recognized medical treatments for the disease of prostatitis. Erickson also provided Christian Science spiritual treatment. He monitored Baumgartner's condition through daily telephone calls.

Erickson's assistant, Ruth Tanner, was a graduate Christian Science nurse certified by the Department of Care of the First Church of Christ, Scientist. Tanner had previously received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois, and had worked as a medical nurse in the Chicago area for many years. She came to Baumgartner's home to assist in his care.

On October 20, 1974, Baumgartner discovered a three inch hole near his rectum through which internal organs protruded. Toxins trapped in his body by his swollen prostate gland had eaten through his body tissues. Tanner dressed the wound using sanitary napkins and instructed Mary Baumgartner in how to clean and apply absorbent dressings.

After the wound developed, John Baumgartner decided to seek medical treatment as an alternative to Christian Science healing. Baumgartner requested his wife, Mary, to obtain a physician and, also, to inform Erickson and Tanner that he no longer wanted their services. Mary Baumgartner telephoned Erickson and advised him that her husband wanted Tanner and him to withdraw from providing

further care. Instead of doing so, Erickson went to the Baumgartner home where he took Mary into a separate room and ordered her to obey him as the doctor in the case. He forbid her to obtain a physician to treat Baumgartner. Erickson told Mrs. Baumgartner that if she even spoke with a medical doctor, her husband would die as a result. Erickson then repeated the same threats to John Baumgartner. As the direct result of Erickson's conduct and statements to the Baumgartners, no medical doctor was called in to treat the decedent's fatally deteriorating case of prostatitis.

Erickson and Tanner continued to administer Christian Science treatment, principally by telephone calls to the Baumgartners. They continued to insist that Christian Science healing was effecting a cure. Meanwhile Baumgartner's condition worsened steadily and he died several days later.

Petitioner, Mary Baumgartner, brought an action for wrongful death against the Church, Erickson and Tanner as Executor of John Baumgartner's estate and on behalf of the minor children, David and Debra. In her Fourth Amended Complaint, she charged respondents with negligence, wilful and wanton misconduct, and Christian Science malpractice. She also sought the creation of a constructive trust composed of all funds received by the Church from Baumgartner's estate. The trial court dismissed these allegations on the basis that respondents are shielded by the First Amendment. This ruling was affirmed by the First District Appellate Court for the State of Illinois. The Illinois Supreme Court declined to consider the case.

REASONS FOR GRANTING THE WRIT

I. The Case Presents Questions of Constitutional Law Not Yet Settled by This Court.

The question of whether the First Amendment protects religious faith healers and their Church from tort liability for causing the death of a patient through their wrongful treatment is a novel and substan-

tial one. As noted by the Illinois Appellate Court, the issue was one of first impression in the state, *Baumgartner v. First Church of Christ, Scientist*, 141 Ill.App.3d 398, 490 N.E.2d 114, 117 (1st Dist. 1986), and it has never been considered by this Court.

The case is part of a growing conflict between the First Amendment's guarantee of religious freedom claimed by faith healers and the interest of the state in protecting the health and welfare of its citizens. The conflict is of substantial importance because the Christian Science Church and other religions holding similar beliefs are major health care providers. The Christian Science Church currently lists in the *The Christian Science Journal*, one of its publications, the names of more than 3,000 practitioners and nurses who are engaged full time in the profession of faith healing. These practitioners and nurses are located in all 50 states and the District of Columbia. 104 *The Christian Sci. J.* (April, 1986) at 50-56.

Moreover, medical insurance companies include the cost of Christian Science treatment in their coverage and certain Christian Science healing services are reimbursable under Medicare and Medicaid. Christian Science Committee on Publication for Illinois, *Legal Rights and Obligations of Christian Scientists in Illinois* at 141-47, 161-65, March, 1978.

The incursion of the Christian Science Church and other denominations that practice faith healing into the health care field is attracting greater government scrutiny and is spawning increasing litigation. State prosecutors in California are bringing manslaughter charges against parents who were followers of Christian Science whose failure to obtain medical care led to the death of their children. *Walker v. Superior Court (People)*, 222 Cal. Rptr. (Cal.App.3d Dist.) *rev. granted*, 224 Cal. Rptr. 340, 715 P.2d 260 (1986); *Rippberger v. Superior Court (People)*, *appeal docketed*, No. 24997 (Cal. March 27, 1986). In Indiana, parents who were members of the Faith Assembly Church were convicted of the reckless homicide of their four month old daughter for relying on spiritual healing to cure the illness which caused the child's death. *Bergmann v. State*, 486 N.E.2d 653 (Ind.App. 4th Dist. 1985). In addition, there is presently pend-

ing before the Michigan Court of Appeals a lawsuit seeking damages against the Christian Science Church and one of its practitioners for the alleged wrongful death of an infant. *Brown v. First Church of Christ, Scientist*, No. 73903 (Mich. App.). An important issue in each case is the First Amendment protection of religion.

The parameters of the First Amendment's protection of faith healing need to be drawn by this Court through its consideration of this case.

II. The Decision Below is in Conflict with Applicable Principles Established by This Court.

There is no dispute that respondents' right to believe that human illness can be treated through prayer is absolute under the First Amendment. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Their right to implement that belief, however, through the administration of Christian Science treatment is not. Their conduct, although motivated by religious belief, can be regulated if there is a superseding compelling government interest. *Bob Jones University v. United States*, 461 U.S. 574 (1983). This Court has recognized previously that the state has a paramount interest and may regulate religious conduct that threatens the health and welfare of its citizens. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

The decision of the Illinois Appellate Court is inconsistent with these principles and is in error. The state has a compelling interest to inhibit practices of the Christian Science Church that cause injury and to provide a remedy to those person who have been injured through the tortious conduct of its practitioners and nurses.

Other religious denominations are dedicated to providing health care through conventional medical treatment by sponsoring and operating hospitals. Yet, those institutions are subject to and must conform with government regulations. *St. Elizabeth Hospital v. N.L.R.B.*, 715 F.2d 1193 (7th Cir. 1983). Why should the Christian Science Church be any different?

The Illinois Appellate Court erroneously relied upon this Court's decisions in *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707 (1981) and *Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich*, 426 U.S. 696 (1976). Petitioner is not requesting the courts to intervene in an intra-church dispute or to interpret the beliefs of the Christian Science Church. She is seeking to make respondents responsible for their denying John Baumgartner life saving medical care through non-religious conduct.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the First District Appellate Court of the State of Illinois.

Respectfully submitted,

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August 29, 1986

Mary BAUMGARTNER, as Executor of the Estate of John Baumgartner, deceased, on Behalf of David Baumgartner and Debra Baumgartner, minor children of the decedent, Plaintiffs-Appellants,

v.

The FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, a foreign corporation, the Northern Trust Company, as Executor of the Estate of Paul A. Erickson, deceased, and Ruth L. Tanner, Defendants-Appellees.

No. 84-1731.

Appellate Court of Illinois,
First District, First Division.

March 4, 1986.

Executor of patient, who died after receiving religious healing treatments, brought action against church, practitioner of religious healing and nurse of religious healing. The Circuit Court, Cook County, William R. Quinlan, J., granting motion to strike and dismiss complaint. Executor appealed. The Appellate Court, Buckley, P.J., held that: (1) executor failed to state claim for medical malpractice; (2) question of whether practitioner and nurse deviated from standard of care of ordinary member of religion was not a justiciable controversy; (3) executor failed to state claim for negligence; (4) whether practitioner and nurse negligently or intentionally applied church doctrine was not a justiciable controversy; and (5) executor could not have property which patient bequeathed to church subject to constructive trust.

Affirmed.

1. Physicians and Surgeons **15(17, 21)**

Practitioner of religious healing and nurse trained in religious healing were not under legal duty to comply with standards of diagnosis and care imposed upon members of medical profession, and thus, medical malpractice claim could not be maintained against them by executor of patient who subsequently died after treatment.

2. Religious Societies **14**

Question of whether or not practitioner in religious healing and nurse trained in religious healing deviated from standard of care of ordinary member of religion was not a justiciable controversy being barred by first amendment [U.S.C.A. Const. Amend. 1].

3. Negligence **2**

In deciding whether a duty of reasonable care exists, trial court is to consider reasonable foreseeability of injury, public policy and social requirements, magnitude of burden of guarding against injury and consequences of placing that burden upon defendant.

4. Constitutional Law **84.5(17)**

Executor of patient, who submitted to religious healing, failed to state a claim against church, practitioner in religious healing, that nurse trained in religious healing; to determine whether those parties breached any duty owed to patient would have required searching inquiry into religious beliefs and validity of beliefs and that inquiry was precluded by first amendment [U.S.C.A. Const.Amend.1].

5. Religious Societies **14**

Whether practitioner in religious healing and nurse trained in religious healing negligently or intentionally applied church doctrine was not a justiciable controversy.

6. Trusts **91**

A "constructive trust" arises by operation of law when circumstances of transaction are such that court finds it inequitable for legal owner to enjoy beneficial interest.

See publication Words and Phrases for other judicial constructions and definitions.

7. Trusts **95,102(1)**

A constructive trust will result when there is breach of fiduciary relationship or when fraud is proved.

8. Religious Societies **31(4)**
Trusts **91**

Executor of patient who submitted to religious healing treatments failed to set forth sufficient facts showing that practitioner of religious healing and nurse trained in religious healing were acting as agents under supervision and control of main church, and even if agency relationship existed, executor was unable to state any underlying actual misconduct against practitioner and nurse; therefore, property, which patient bequeathed to church, could not be held subject to constructive trust on basis that practitioner and nurse were acting as agents of church when they treated patient.

Hinshaw, Culbertson, Moelmann, Hoban & Fuller (Perry L. Fuller, D. Kendall Griffith, Milo W. Lundblad, Joanna C. New, of counsel), Chicago, for plaintiff-appellant Mary Baumgartner.

Wildman, Harrold, Allen & Dixon (Max Wildman, Robert E. Kehoe, Jr., Jane A. Zimmerman, of counsel), Chicago, for defendant-appellee The First Church of Christ Scientist.

Matthews, Dean, Simantz, Hem & Whitt (Stuart L. Whitt, Ronald M. Hem, Susan L. Schneider, of counsel), Aurora, for defendant-appellee The Northern Trust Co.

French, Rogers, Kezelis & Kominiarek (Richard G. French, Gilbert J. Rogers, Russell P. Veldenz, of counsel), Chicago, for defendant-appellee Tanner.

Presiding Judge BUCKLEY delivered the opinion of the court:

Plaintiff, Mary Baumgartner, as executor of the estate of John Baumgartner, deceased, brought an action for wrongful death against

The First Church of Christ, Scientist ("Mother Church"), Ruth L. Tanner, and the Northern Trust Company, as executor of the estate of Paul A. Erickson, deceased. Plaintiff's action arises out of Christian Science treatment rendered to decedent by Tanner and Erickson. Defendants filed a motion to strike and dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure. (Ill.Rev.Stat.1983, ch. 110, par. 2-619.) The motion was granted and plaintiff appeals. For the reasons set forth below, we affirm.

Initially, we observe that Christian Science is a widely known religion and courts will take judicial notice of its general teachings. *(Northern Trust Co. v. Commissioner of Internal Revenue* (7th Cir.1940), 116 F.2d 96, 98.) Its basic premise, as plaintiff acknowledges in her pleading, is that physical disease can be healed by spiritual means alone. As stated in an article on Christian Science from the Encyclopedia Britannica (15th ed., 1984, *Macropaedia,* vol. 4, pp. 562-64):

> "Christian Science is a religious denomination founded in the United States in 1879 by Mary Baker Eddy (1821-1910), author of the book that contains the definitive statement of its teaching, *Science and Health with Key to the Scriptures.* About one-third of its nearly 3,000 congregations are located in 56 countries outside the United States, with membership concentrated in areas with strong Protestant traditions. It is widely known for its practice of spiritual healing, an emphasis best understood in relation to its historical background and teaching.
>
> The cure of disease through prayer is seen as a necessary element in a full redemption from the flesh. Church historian Karl Holl summarizes the concept of treatment, or prayer, in Christian Science as 'a silent yielding of self to God, an ever closer relationship to God, until His omnipresence and love are felt effectively by man,' and he distinguishes this decisively from willpower or mental suggestion."

We further note that the present appeal is before this court on a motion to dismiss which admits all well-pleaded facts in plaintiff's complaint. *(Magana v. Elie* (1982), 108 Ill.App.3d 1028, 64 Ill.Dec. 511, 439 N.E.2nd 1319.) Consequently, in reviewing the arguments

on appeal, the following factual allegations contained in plaintiff's complaint are admitted as true.

Plaintiff's fourth amended complaint alleged that on October 13, 1974, the decedent, plaintiff's husband, contracted acute prostatitis. The illness manifested itself through severe pain in the groin area and the inability to urinate. Decedent immediately contacted Paul Erickson and advised him of his illness. Decedent requested that Erickson provide him with Christian Science treatment. Erickson, a Christian Science practitioner, had provided decedent with Christian Science healing on several prior occasions. He was also plaintiff's teacher and advisor on Christian Science. Erickson had been instructed by the Mother Church in the methods of Christian Science healing and was listed in *The Christian Science Journal*, a publication of the organization. By listing practitioners in the journal, the Mother Church certifies their training and competence.

Erickson came to decedent's home shortly after being contacted and administered hot baths and Christian Science treatment. Erickson also "massaged and manipulated" decedent's prostate gland. For the next several days, decedent's condition remained unchanged. Erickson therefore contacted defendant Ruth Tanner and directed her to go to decedent's home to assist in rendering Christian Science healing. Tanner was a Christian Science nurse certified by the Department of Care of the Mother Church and was also listed in its journal. Tanner proceeded to provide Christian Science treatment to decedent. Erickson called daily to check on decedent's condition and he visited frequently to provide healing.

Decedent's condition began to deteriorate. Plaintiff alleges that decedent decided he wanted medical treatment for his illness and that he no longer wished to be treated by Tanner and Erickson. She further alleges that when Tanner was advised of this request, he told decedent that he would die if a medical doctor was called and assured decedent that he was being cured by Christian Science healing. Decedent and plaintiff did not call in a medical doctor and instead continued with the Christian Science healing provided by Tanner and Erickson. Decedent's condition further deteriorated and he died on October 23, 1974, 10 days after he became ill.

At the time of his death, decedent had been a wealthy inventor and industrialist. He was survived by plaintiff and his two minor children. The complaint alleges that prior to his death, decedent changed his will at the insistence of Erickson and made the Mother Church a residual beneficiary of approximately one-half of his multi-million dollar estate.

Plaintiff thereafter initiated a wrongful death action against the Mother Church, Tanner, and Erickson, who is now deceased. The pleading before this court is plaintiff's fourth amended complaint which contains five counts. Count I alleges ordinary negligence, count II alleges intentional/reckless misconduct, count III seeks recovery for medical malpractice and count IV sets forth a Christian Science malpractice claim. Count V is directed only against the Mother Church for a constructive trust. The trial court dismissed the entire fourth amended complaint for failure to state a cause of action. The dismissal was based on first amendment grounds. On appeal, plaintiff challenges the dismissal of all five counts. The issues raised on appeal are matters of first impression in this State.

I.

[1] We first address the propriety of the trial court's dismissal of the count in plaintiff's complaint seeking recovery for medical malpractice. This claim is based on the premise that Erickson and Tanner were under a legal duty to comply with the standards of diagnosis and care that are imposed upon members of the medical profession even though they had been retained by decedent for Christian Science treatment. We find no merit to plaintiff's claim. Legislative and judicial distinctions between medical and spiritual treatment belie the existence of any such duty.

Our state legislature recognized the fundamental difference between spiritual treatment of human ailments and medical treatment when it enacted the Medical Practice Act (Ill.Rev.Stat.1983, ch. 111, par. 4474.) This Act exempts religious treatment from licensing, testing and other regulation. (Ill.Rev.Stat.1983, ch. 111, par. 4474.)

Specifically, section 4474 provides that the Act does not apply to "persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom." Similarly, nurses who provide "care of the sick where treatment is by prayer or spiritual means" are expressly exempt from the requirement that all nurses be licensed. (Ill.Rev.Stat.1983, ch. 111, par. 3402.) It follows that persons in these categories, exempt as a matter of public policy from the statutory framework which sets up standards for the medical profession, may not be held liable for failing to comply with medical standards to which they are not subject.

The argument that Christian Science practitioners should be held to medical standards has been expressly rejected by the New Hampshire Supreme Court. *(Spead v. Tomlinson* (1904), 73 N.H. 46, 59 A. 376.) There, the court affirmed a directed verdict for a Christian Science practitioner where the plaintiff sought to recover for medical malpractice. In so holding, the court noted that the plaintiff knew that the defendant was not a member of the regular school of physicians and did not practice according to its methods, but instead was a Christian Scientist and practiced according to the methods recognized by such healers. The *Spread* court reasoned:

> "* * * As is said in Story's Bailments, § 435: 'If a person will knowingly employ a common matmaker to weave or embroider a fine carpet, he must impute the bad workmanship to his own folly. So, if a man who has a disorder of his eye should employ a farrier to cure the disease, and he should lose his sight by using the remedy prescribed in such cases for horses, he would certainly have no legal ground of complaint.' And in cases involving the liability of medical practitioners courts have held that, 'If there are distinct and differing schools of practice, as allopathic, or old school, homeopathic, Thompsonian, hydropathic, or water cure, and a physician of one of those schools is called in, his treatment is to be tested by the general doctrines of his school, and not by those of other schools.' [Citations omitted.]" 59 A. 376, 378.

Our supreme court has adopted the key principle upon which the *Spead* decision was predicated: that a plaintiff may not

successfully establish a standard of care for one health care specialty offering the testimony of someone who practices a different specialty. *(Dolan v. Galluzzo)* (1979), 77 Ill.2d 279, 32 Ill.Dec. 900, 396 N.E.2d 13.) In *Dolan*, it was held that the standard care for a podiatrist may not be established through a physician or surgeon.

Here, plaintiff does not allege that Erickson or Tanner held themselves out to decedent as medical practitioners, nor that decedent expected or asked them to render medical treatment. As plaintiff concedes in her complaint, followers of Christian Science do not use medical aid to treat illness, but instead rely solely upon spiritual means. Decedent specifically requested Christian Science treatment when he became ill and could not have reasonably expected anything other than spiritual healing from Tanner and Erickson. There is no allegation that decedent was incompetent prior to his death. Viewing these facts and circumstances in light of the authorities cited above, we find that plaintiff cannot state a cause of action for medical malpractice.

II.

We next consider plaintiff's count based on a theory of Christian Science malpractice. Specifically, plaintiff alleges that Erickson and Tanner deviated from the standard of care of an ordinary Christian Science practitioner and nurse when they treated decedent. We find no basis for recovery under such a theory.

The United States Constitution dictates that the only entity with the authority and power to determine whether there has been a deviation from "true" Christian Science practice is the Christian Science Church itself. As the United States Supreme Court has held, the first amendment bars the judiciary from considering whether certain religious conduct conforms to the standards of a particular religious group. *(Thomas v. Review Board of Indiana Employment Security Division* (1981), 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624; *Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich* (1976), 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151.)

In *Thomas*, it was held that probing the proper interpretation of religious beliefs "is not within the judicial function and judicial competence" and that "[c]ourts are not arbiters of scriptural interpretation." (450 U.S. 707, 716, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624, 632.) Similarly, in the *Milivojevich* case, the United States Supreme Court reversed a decision by the Illinois Supreme Court, holding that the court improperly inquired into the propriety of the removal of a bishop from his post and the reorganization of the church diocese.

In Illinois, with the exception of *Milivojevich*, there has been a long standing reluctance on the part of our courts to adjudicate religious disputes. From very early on, Illinois courts have consistently declined to entertain cases involving the interpretation of religious doctrine. (See, *e.g.*, *Chase v. Cheney* (1871), 58 Ill. 509; *Fussell v. Hail* (1908), 233 Ill. 73, 84 N.E. 42; *Pfeifer v. Christian Science Committee on Publications* (1975), 31 Ill.App.3d 845, 334 N.E.2nd 876.) In *Chase*, our supreme court refused to become involved in the question of whether an Episcopal minister had deviated from the Book of Common Prayer. The *Chase* court stated:

> "* * * We do not aspire to become *de facto* heads of the church, and, by construction or otherwise, abrogate its laws and canons. We shall not inquire whether the alleged omission is any offense. *This is a question of ecclesiastical cognizance. This is no forum for such adjudication.* The church should guard its own fold; enact and construe its own laws; enforce its own discipline; and thus will be maintained the boundary between the temporal and spiritual power." (Emphasis added.) (58 Ill. 509, 535.)

The *Chase* court further observed that "[f]reedom of religious profession and worship can not be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials." 58 Ill. 509, 537.

The *Chase* case was later cited in *Fussell v. Hail* (1908), 233 Ill. 73, 84 N.E. 42. In *Fussell*, the plaintiffs were members of the Cumberland Presbyterian Church and were opposed to the union of that church with the Presbyterian Church in the United States of America. The plaintiffs sought a declaration that Cumberland could

not, under the church constitution, consummate the union. The supreme court, in affirming the dismissal of the action, stated:

> "A court of chancery has no jurisdiction of the subject matter of this controversy. The object of the bill is to have a court of chancery, by its process, assume control of the action of an ecclesiastical tribunal, declare the extent of its jurisidiction, examine the regularity of its proceedings and revise its judgments. The civil courts deal only with civil or property rights. *They have no jurisdiction of religious or ecclesiastical controversies.* Our constitution says: 'The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.' Such freedom of religious profession and worship cannot be maintained if the civil courts may interfere in matters of church organization, creed and discipline, construe the constitution, canons or rules of the church and regulate and revise its trials and the proceedings of its governing bodies. [Citations omitted.]" (Emphasis added.) (233 Ill. 73, 77, 84 N.E. 42.)

More recently, in *Pfeifer v. Christian Science Committee on Publications* (1975), 31 Ill.App.3d 845, 334 N.E.2d 876, this court followed *Chase* and *Fussell* when it affirmed the dismissal of a complaint alleging that a Christian Science practitioner's lessons deviated from the tenets of Christian Science. We held in *Pfeifer* that we lacked jurisdiction under the first amendment to determine whether the practitioner's teachings conformed to those of Christian Science founder Mary Baker Eddy. 31 Ill.App.3d 845, 846, 334 N.E.2d 876.

[2] As in each of the above mentioned cases, adjudication of the present case would require the court to extensively investigate and evaluate religious tenets and doctrines: first, to establish the standard of care of an "ordinary" Christian Science practitioner; and second, to determine whether Erickson and Tanner deviated from those standards. We believe that the first amendment precludes such an intrusive inquiry by the civil courts into religious matters.

At oral argument before this court, counsel for plaintiff acknowledged that any inquiry into Christian Science beliefs would be precluded by the first amendment. He urged, however, that defendants' conduct can be objectively evaluated by a court of law without such an

inquiry. In support of this contention, counsel relied on Article VIII, par. 23 of the Manual of The Mother Church which provides that "[i]f a member of this Church has a patient whom he does not heal, and whose case he cannot fully diagnose, he may consult with an M.D. on the anatomy involved." Significantly, this section does not require that a practitioner *must* consult with a medical doctor — it merely provides that he *may* do so. For a court of law to determine whether Erickson and Tanner violated the above tenet, it would first need to interpret the permissive language of this religious doctrine promulgated by the Mother Church. As noted above, an inquiry of this precise nature was expressly forbidden by this court in *Pfeifer v. Christian Science Board Committee on Publications* (1975), 31 Ill. App.3d 845, 334 N.E.2d 876.

Plaintiff in her brief relies on *Prince v. Massachusetts* (1944), 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, *Cox v. New Hampshire* (1941), 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, and *Reynolds v. United States* (1878), 98 U.S. (8 Otto) 145, 25 L.Ed. 244. In *Prince*, it was held that the use of children to sell church literature violated a statute prohibiting child labor. In *Cox*, the court held that parades for religious purposes did not excuse a church group from obtaining a permit. *Reynolds* held that the religious practice of polygamy violated state law.

We find each of the above cases distinguishable from the present case. In each instance, the wrongful conduct, although religiously motivated, could be analyzed without first evaluating the tenets of a particular religion. Moreover, the polygamous marriage bans were upheld in *Reynolds* because the practice consisted of overt acts determined to be deleterious to public morals and welfare. No such overt, immoral activity is involved in this case.

Plaintiff also cites *Jacobson v. Massachusetts* (1905), 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, where an individual's claim of exemption from compulsory small pox vaccination was denied because the state's interest in public health was superior. We find this case to be inapposite since society can protect itself from the danger of loathsome and contagious disease, an issue which is not now before us.

We find none of the above authorities cited by plaintiff to be persuasive analogy. The question of whether or not defendants deviated from the standard of care of an ordinary Christian Scientist is not a justiciable controversy. Accordingly, the trial court properly dismissed plaintiff's count seeking recovery for Christian Science malpractice.

III.

Next, we consider whether the trial court correctly dismissed plaintiff's count based on ordinary negligence. Plaintiff alleged that Erickson and Tanner were negligent because they failed to withdraw from treating decedent when requested to do so; failed to withdraw when they knew or should have known Christian Science treatment was not curing decedent; failed to consult a medical doctor when they knew or should have known Christian Science treatment was not curing decedent's illness; failed to consult a medical doctor when requested to do so and when they knew decedent was going to die without medical treatment; advised decedent not to obtain medical care; coerced decedent into not calling in a medical doctor; misrepresented to decedent that the Christian Science treatment was working; and breached a fiduciary relationship.

[3] To set forth a cause of action sounding in negligence, a plaintiff must allege the existence of a duty of reasonable care owed plaintiff by defendant, breach of that duty and injury proximately resulting from the breach. *(Magnone v. Chicago & North Western Transportation Co.* (1984), 126 Ill.App.3d 170, 81 Ill.Dec. 459, 466 N.E.2d 1261.) The existence of a duty is a matter of law, to be decided by the court. *(Barnes v. Washington* (1973), 56 Ill.2d 22, 305 N.E.2d 535.) In deciding whether a duty exists, the court is to consider the reasonable foreseeability of the injury, public policy and social requirements, the magnitude of the burden of guarding against injury and the consequences of placing that burden upon the defendant. *Morgan v. Dalton Management Co.* (1983), 117 Ill.App.3d ;815, 73 Ill.Dec. 313, 454 N.E.2d 57.

[4] Applying these principals to the case at hand, we find that plaintiff's negligence claim must fail. For the court to determine whether defendants breached any duty owed to decedent would require a searching inquiry into Christian Science beliefs and the validity of such beliefs. As established above, such an inquiry is precluded by the first amendment.

We recognize that plaintiff alleges in her complaint that Erickson and Tanner persuaded decedent and his family not to call in a medical doctor through "coercion" and "intimidation." Such allegations, however, are merely conclusionary. Plaintiff does not allege that decedent was not rational or mentally incompetent. Nor does she allege that decedent or herself was physically imprisoned by defendants and thus unable to contact a physician. The facts as alleged by plaintiff fail to show that the Christian Science treatment provided to decedent, a competent adult, was not a matter of his own choice and free will at all times prior to his death. Our supreme court has made it clear that a competent adult has the right under the first amendment to refuse medical treatment when it conflicts with his religious beliefs. *In re Estate of Brooks* (1965), 32 Ill.2d 361, 205 N.E.2d 435.

Accordingly, we conclude that plaintiff has failed to state a cause of action for negligence and that the trial court properly dismissed plaintiff's negligence count.

IV.

[5] We next consider plaintiff's count alleging that defendants acted with intentional or reckless disregard for decedent's health and safety. The allegations in this count are virtually identical to those in the count premised on ordinary negligence. Plaintiff merely added the words "acted intentionally or with reckless disregard." We believe that the same rationale which caused plaintiff's negligence count to fail also causes the intentional/reckless disregard count to fail. Whether or not defendants negligently or intentionally applied church doctrine is not a justiciable controversy.

[6, 7] Finally, we turn to the allegations in count V, which seeks to impose a constructive trust against the Mother Church. "A constructive trust is a device used by chancery to compel one who unfairly holds a property interest to convey that interest to another to whom it justly belongs." *(Sadacca v. Monhart* (1984), 128 Ill.App.3d 250, 255, 83 Ill.Dec. 463, 470 N.E.2d 589.) A constructive trust "arises by operation of law when the circumstances of a transaction are such that the court finds it inequitable for the legal owner to enjoy the beneficial interest." (128 Ill.App.3d 250, 255, 83 Ill.Dec. 463, 470 N.E.2d 589.) A constructive trust will result when there is a breach of a fiduciary relationship or when fraud is proved. *Williams v. Teachers Insurance & Annuity Association* (1973), 15 Ill.App.3d 542, 304 N.E.2d 656.

In the present case, plaintiff alleges in count V that the property which decedent bequeathed to the Mother Church is subject to a constructive trust because Erickson and Tanner were acting as agents of the Mother Church when they treated decedent. Plaintiff argues that the Mother Church is therefore liable for the misconduct of Erickson and Tanner under a theory of *respondeat superior.* Plaintiff in count V repeats the same allegations of misconduct set forth in her counts based on negligence and intentional/reckless disregard.

[8] Plaintiff's attempt to impose a constructive trust must fail. First, plaintiff has failed to set forth sufficient facts showing that Erickson and Tanner were acting as agents under the supervision and control of the Mother Church. It is held that the facts upon which an agent-principal relationship is based must be specifically pleaded. *(Kutner v. DeMassa* (1981), 96 Ill.App.3d 243, 51 Ill.Dec. 723, 421 N.E.2d 231.) Furthermore, even assuming the existence of an agency relationship, we have already held that plaintiff is unable to state any underlying actionable misconduct against Erickson and Tanner. As such, any action against the Mother Church based on an agency theory obviously must also fail. Consequently, the trial court correctly dismissed count V of plaintiff's fourth amended complaint.

For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

Affirmed.

LINN and CAMPBELL, JJ., concur.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

June 3, 1986

Mr. Clark D. Pellett
Pellett, Lundblad & Baker
401 S. LaSalle St., S#1302
Chicago, IL 60605

No. 63336 — Mary Baumgartner, as Exr., etc., petitioner, v. The First Church of Christ, Scientist, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1986.

STATE OF ILLINOIS
COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY.
Illinois County Department
Law Division

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,
Plaintiffs

v.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation; THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased; and RUTH L. TANNER,
Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

Now comes MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent, by and through her attorneys, HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER, and complaints of defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON (Paul A. Erickson) and RUTH L. TANNER, as follows:

COUNT I

1. Defendant, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), was founded by Mary Baker Eddy in 1879. Its basic premise is that physical disease can be healed by spiritual means alone. Followers of the religion do not use medical aid to treat illness and rely upon Christian Science healing.

2. The Mother Church trains practitioners and nurses who are sent out to heal illnesses among its members. Practitioners and nurses trained and approved by the Mother Church are listed in *The Christian Science Journal*, a publication of the organization. By listing practitioners and nurses in the *Journal*, The Mother Church certifies their training and competence.

3. Practitioners and nurses working in the field for The Mother Church are required to recruit new members for it and to solicit funds for The Church through donations or testamentary bequests.

4. Practitioners and nurses charge for healing services they render. They are professionals and they are expected by The Mother Church to earn their living from healing.

5. The practice of Christian Science healing by practitioners and nurses is directed and controlled by The Mother Church and they must follow specific guidelines, procedures and regulations promulgated by the Church when providing Christian Science treatment. Practitioners and nurses who fail to do so are disciplined by The Mother Church.

6. In October of 1974, defendant, PAUL A. ERICKSON, was a Christian Practitioner who had been instructed by The Mother Church in the ways of Christian Science healing and was listed in *The Christian Science Journal*. Erickson practiced Christian Science healing in and around Aurora, Illinois.

7. In October of 1974, defendant, RUTH L. TANNER, was a graduate Christian Science nurse certified by the Department of Care of the Mother Church. Tanner was listed in *The Christian Science Journal* and practiced Christian Science healing in and around Naperville, Illinois.

8. At all times when defendants ERICKSON and TANNER practiced Christian Science healing and in particular when they were treating JOHN BAUMGARTNER, they were acting as agents of The Mother Church under its supervision and control.

9. Prior to October of 1974, Ruth L. Tanner received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois and, thereafter, she practiced her profession at Copley Memorial Hospital and in the Chicago area as a visiting nurse.

10. Prior to October 1974, Paul A. Erickson sought and obtained medical treatment for his own illnesses and injuries while holding himself out as being a Christian Science practitioner.

11. JOHN BAUMGARTNER was a wealthy inventor and industrialist. He founded the Anchor Brush Company that was formerly headquartered near Aurora, Illinois. At the time of his death in October of 1974, he was living near Plano, Illinois with his wife, Mary, and their two minor children, David and Debra.

12. Prior to October of 1974, Paul A. Erickson had treated JOHN BAUMGARTNER for minor illnesses and had counseled him on business and personal matters.

13. Prior to October of 1974, JOHN BAUMGARTNER's wife, Mary, had been a member of Erickson's association within the Church and he was her teacher and advisor on Christian Science.

14. Prior to October of 1974, JOHN BAUMGARTNER changed his Will at the insistence of PAUL ERICKSON and made The Mother Church a residual beneficiary of approximately one half of his estate

which was worth several million dollars. The Mother Church knew of the provisions of the Will and that it would receive a substantial sum of money at this death.

15. On October 13, 1974, JOHN BAUMGARTNER contracted acute prostatitis while driving his family home from a trip to St. Louis, Missouri. The illness manifested itself through severe pain in the groin area and the inability to urinate. Prostatitis can be treated medically through simple surgery and medication.

16. After arriving at his home near Plano, Illinois, JOHN BAUMGARTNER called PAUL ERICKSON, advised him of his illness, and requested ERICKSON to provide him with Christian Science treatment. ERICKSON had provided BAUMGARTNER with Christian Science healing on several other prior occasions.

17. ERICKSON came to the BAUMGARTNER home immediately that same night. He locked himself into a bathroom with the decedent and administered hot baths and Christian Science treatment to him. Erickson also massaged and manipulated JOHN BAUMGARTNER'S prostate gland.

18. For the next several days BAUMGARTNER'S condition remained unchanged. He continued to have severe pain in the groin area and he could not eliminate body wastes.

19. PAUL ERICKSON contacted RUTH TANNER and directed her to go to the BAUMGARTNER home to assist in treating the decedent. ERICKSON called daily to check on BAUMGARTNER'S condition and he visited frequently to provide treatment. TANNER also provided Christian Science treatment to the decedent.

20. On or about October 20, 1974, JOHN BAUMGARTNER asked Mary to inspect an opening he felt in his rectum. She looked and observed an internal organ protruding from a three inch opening in his rectum. RUTH TANNER was present and she placed a dressing on the wound made from sanitary napkins. She also instructed

MRS. BAUMGARTNER on how to clean the wound and to replace the dressing.

21. After the wound developed, JOHN BAUMGARTNER decided that he wanted medical treatment for his illness and that he no longer wished to be treated by Erickson and Tanner. The decedent asked his wife, Mary, to call in a physician and to advise Erickson and Tanner that he had withdrawn his consent to further treatment by them.

22. MARY BAUMGARTNER called Paul Erickson and advised him that the decedent wanted medical treatment for his illness and that she was going to call a physician in for him. She also requested Erickson and Tanner to withdraw from the case because JOHN BAUMGARTNER was withdrawing his consent to further treatment by them.

23. Erickson arrived at the BAUMGARTNER home within a few minutes after his telephone conversation with MRS. BAUMGARTNER. He took her into the kitchen of the home out of the presence of the decedent and shouted at her that he was the doctor, that she was his nurse and student and, as such, she was to follow his orders. His orders were that no medical doctor would be brought in to treat the decedent. Erickson threatened MRS. BAUMGARTNER that if she even talked to a physician, her husband would be sure to die and it would be her fault. Erickson told MRS. BAUMGARTNER that Christian Science treatment was curing the decedent.

24. Erickson went into the decedent's bedroom and repeated his threats to JOHN BAUMGARTNER that he would die if a medical doctor was called and Erickson told him that he was being cured by Christian Science healing.

25. ERICKSON and TANNER continued to treat MR. BAUMGARTNER and they continued to assure the BAUMGARTNERS that the decedent was being cured by their Christian Science treatment even though he had developed a three-inch hole near his rectum through which internal organs protruded.

26. No medical doctor was called in to treat MR. BAUMGARTNER. His condition continued to deteriorate and he died several days later.

27. MARY BAUMGARTNER paid the fees charged by TANNER and ERICKSON for their healing services.

28. Erickson and Tanner knew or should have known that JOHN BAUMGARTNER needed immediate medical treatment to survive his illness after a three-inch hole developed near his rectum out of which internal organs protruded.

29. That Erickson and Tanner knew or should have known that Christian Science healing was not and could not cure JOHN BAUMGARTNER after a three-inch hole developed near his rectum out of which internal organs protruded.

30. Defendants owed to JOHN BAUMGARTNER the duty of not interfering with his right to obtain medical care to protect his health and safety.

31. Defendants, each and every one, were guilty of one or more of the following wrongful acts and/or omissions of negligence:

(a) Failed to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Failed to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Failed to consult with a medical doctor when requested to do so.

(d) Failed to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew or should have known that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew or should have known that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful Death Action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of the decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor

of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT II

1.—30. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 30 of Count I of this complaint as and for her allegations in paragraphs 1 through 30 of Count II of this complaint.

31. Defendants each and every one, acted intentionally or with reckless disregard to deprive JOHN BAUMGARTNER of medical care and to cause his death to gain substantial sums of money from his estate through one or more of the following wrongful acts:

(a) Refused to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Refused to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing intentional or reckless wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT III

1. — 29. Plaintiff hereby adopts, reasserts, and realleges the allegations contained in paragraph 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. Defendants provided medical care to JOHN BAUMGARTNER by massaging and manipulating his prostate gland and by treating his open wound and therefore assumed voluntarily the duty to act in accordance with accepted standards of prevailing medical practice in the greater Chicago area in 1974.

31. Defendants each and every one, were guilty of the following wrongful acts and/or omissions of negligence:

a) Failed to diagnose and treat JOHN BAUMGARTNER'S illness;

b) Failed to consult with persons having greater medical knowledge and expertise concerning the illness of JOHN BAUMGARTNER;

c) Provided medical treatment without having received the requisite training and instruction in medicine;

d) Failed to provide proper medical treatment to JOHN BAUMGARTNER for prostatitis.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted

her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, pray for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT IV

1.—29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. That defendants ERICKSON and TANNER had a duty to treat the decedent, JOHN BAUMGARTNER, in accordance with the accepted standards of prevailing Christian Science practice and opinion in the greater Chicago area in 1974, and, to exercise that degree of care and caution commonly exercised by other members of their profession in the community.

31. THAT PAUL A. ERICKSON and RUTH L. TANNER were then and there guilty of one or more of the following wrongful acts and/or omissions of carelessness and negligence:

a. Failed to consult with a medical doctor concerning the illness of JOHN BAUMGARTNER and the anatomy involved when they were unable to heal or cause an improvement in the Decedent's condition in violation of Article VIII, §23 of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts;

b. Ignored requests that a medical doctor be called in to examine and treat the Decedent's illness in violation of the ethics of Christian Science Practitioners and Christian Science Nurses;

c. Assured JOHN BAUMGARTNER and MARY BAUMGARTNER that there was nothing wrong with his physical condition when they knew or should have known it was fatally deteriorating;

d. Intimidated and coerced the BAUMGARTNERS and caused them to refrain from calling in a medical doctor to treat the Decedent;

e. Failed to consult with the medical doctor to treat the Decedent;

f. Failed to consult with a medical doctor concerning the Decedent's illness when they knew or should have known that their metaphysical treatment did not heal and was not causing any improvement in the Decedent's condition;

g. Failed to inform JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, of the seriousness of his physical ailments;

h. Advised JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, to abstain from seeking medical care for his illness; and

i. Failed to discontinue treatment after consent to it was withdrawn.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER

By: _____

Attorneys for plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Dec., on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent

69 West Washington Street
Chicago, Illinois 60602
630-4400

STATE OF ILLINOIS
COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY,
Illinois County Department,
Law Division

MARY BAUMGARTNER, as the Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,

Plaintiffs

v.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation, et al.

Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

COUNT V

1.—29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count V of this complaint.

30. David and Debra Baumgartner are children and heirs of the decedent, JOHN BAUMGARTNER. David is 18 years old and Debra is 15 years old.

31. That Erickson and Tanner knew that Christian Science healing was not curing and could not cure John Baumgartner after a three-inch hole developed near his rectum out of which internal organs protruded.

32. The Mother Church through its agents, Erickson and Tanner, intentionally deprived John Baumgartner of medical care with the knowledge that John Baumgartner would die unless he received immediate medical treatment through the following acts:

(a) Refused to withdraw from treating John Baumgartner when requested to do so.

(b) Refused to withdraw from treating John Baumgartner after being requested to do so when they knew that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew that John Baumgartner was going to die without immediate medical treatment.

(e) Advised John Baumgartner and his family not to obtain medical care when they knew that John Baumgartner was going to die without immediate treatment by a physician.

(f) Stopped John Baumgartner and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped John Baumgartner and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing Baumgartner when they knew that it was not and could not cure his illness.

(h) Stopped John Baumgartner and his family from calling in a medical doctor through abuse of their fiduciary relationships with the Baumgartners by controlling their minds and actions.

33. As a direct and proximate result of one or more of the foregoing intentional acts of The Mother Church through its agents Erickson and Tanner, no medical doctor was called in to treat John Baumgartner and he died on October 23, 1974.

33. As a direct and proximate result of one or more of the foregoing intentional acts of The Mother Church through its agents Erickson and Tanner, no medical doctor was called in to treat John Baumgartner and he died on October 23, 1974.

34. Under the terms of John Baumgartner's Will, The Mother Church has received $1,290,008.00 worth of property and will receive approximately more than $2.0 million worth of property in the near future when John Baumgartner's Estate is closed.

35. The Mother Church's receipt of property from the Baumgartner Estate is against the public policy of the State of Illinois because John Baumgartner's death was caused by the intentional wrongful acts of The Mother Church to deprive John Baumgartner of medical care when it knew that he would die without medical treatment. Therefore, as a matter of public policy The Mother Church should not be permitted to benefit from its wrongful conduct.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays that this court exercises its equitable powers to create a Constructive Trust over the money and property received and to be received by The First Church of Christ, Scientist, in Boston, Massachusetts, from the Estate of John Baumgartner, Deceased, to be held in Constructive Trust for the benefit of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the children and heirs of the decedent.

HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER

By: _____

Attorneys for plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of decedent

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